

ASSEMBLY BILL

No. 334

Introduced by Assembly Member Gomez

February 13, 2013

An act to amend Section 11045 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 334, as introduced, Gomez. State personnel: employment of outside legal counsel.

Existing law generally requires the written consent of the Attorney General prior to employment of outside counsel for representation of any state agency or employee in any judicial proceeding. Existing law requires a state agency requesting the consent of the Attorney General to employ outside counsel to provide a notice containing specified information regarding the request to the designated representative of State Employees Bargaining Unit 2. Existing law further requires a state agency, when it submits a contract for outside counsel to the Department of General Services in connection with state contracting requirements, to also submit a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

This bill would provide that the failure of a state agency to provide a copy of the contract for outside counsel to the designated representative State Employees Bargaining Unit 2 when it provides a copy to the Department of General Services, as described above, is an independent basis for the State Personnel Board to disapprove the contract.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11045 of the Government Code is amended to read:

11045. (a) (1) Whenever a state agency requests the consent of the Attorney General to employ outside counsel, as required by Section 11040, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent required by subdivision (c) of Section 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five business days prior to execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside legal counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).

(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all consents granted to every state agency pursuant to Section 11040.

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2. *The failure of a state agency to provide a copy of the contract to the designated representative shall be an independent basis for the State Personnel Board to disapprove the*

1 *contract pursuant to the authority granted by Article 4*
2 *(commencing with Section 19130) of Chapter 5 of Part 2 of*
3 *Division 5.*

4 (d) “Written notice” within the meaning of this section shall
5 include, but not be limited to, all of the following:

6 (1) A copy of the complaint or other pleadings, if any, that gave
7 rise to the litigation or matter for which a contract is being sought,
8 or other identifying information.

9 (2) The justification for the contract, pursuant to subdivision
10 (b) of Section 19130.

11 (3) The nature of the legal services to be performed.

12 (4) The estimated hourly wage to be paid under the contract.

13 (5) The estimated length of the contract.

14 (6) The identity of the person or entity that is entering into the
15 contract with the state.

16 (e) “State agency,” as used in this section, means every state
17 office, department, division, bureau, board, or commission,
18 including the Board of Directors of the State Compensation
19 Insurance Fund, but does not include the Regents of the University
20 of California, the Trustees of the California State University, the
21 Legislature, the courts, or any agency in the judicial branch of
22 government.

23 (f) (1) The notice requirements of this section do not apply to
24 contracts for expert witnesses or consultations in connection with
25 a confidential investigation or to any confidential component of a
26 pending or active legal action.

27 (2) The exemption authorized in paragraph (1) shall only apply
28 as long as necessary to protect the confidentiality of the
29 investigation or the confidential component of a pending or active
30 legal action.

31 (3) Disclosures made pursuant to this section are deemed to be
32 privileged communications for purposes of subdivision (c) of
33 Section 912 of the Evidence Code, and shall not be construed to
34 be a waiver of any privilege or exemption provided by law,
35 including, but not limited to, the lawyer-client privilege, as
36 described in Section 952 of the Evidence Code, or attorney work
37 product, as described in Chapter 4 (commencing with Section
38 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

39 (g) If the provisions of this section are in conflict with the
40 provisions of a memorandum of understanding or other written

1 agreement reached pursuant to Section 3517 or 3517.5, the
2 memorandum of understanding or agreement shall be controlling
3 without further legislative action, except that if any provision of
4 the memorandum of understanding or other agreement requires
5 the expenditure of funds, the provisions may not become effective
6 unless approved by the Legislature.

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